IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 747 of 2002
With
CRIMINAL APPEAL No. 744 of 2002
With
CRIMINAL APPEAL No. 862 of 2002
With
CRIMINAL APPEAL No. 868 of 2002
With
CRIMINAL APPEAL No. 743 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAVIT ALIAS KAVINDRA VISHNUBHAI PANCHAL - Appellant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :

1. **Criminal Appeal No. 747/2002**
   Mr. Dharmesh D. Nanavati for Appellant
   Mr. R.C.Kodekar, APP for Respondent
2. **Criminal Appeal No. 744/2002**
   Mr. Jal Soli Unwala for Appellant
   Mr. R.C.Kodekar, APP for Respondent
3. **Criminal Appeal No. 862/2002**
   Mr. JM Panchal for Appellant
   Mr. R.C.Kodekar, APP for Respondent
4. **Criminal Appeal No. 868/2002**
   Mr. Adil Mehta for Appellant
   Mr. R.C.Kodekar, APP for Respondent
5. **Criminal Appeal No. 743/2002**
   Mr. Mr JM Panchal for Appellant
   Mr. R.C.Kodekar, APP for Respondent

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 25.9.2007/5.10.2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. These five Criminal Appeals, under Section 374 of the Code of Criminal Procedure (“the Code” for short) are directed against the judgment and

order dated 19.08.2002 rendered in Sessions Case No. 67 of 2001 by the learned Additional Sessions Judge, Court No.7, Ahmedabad City, by which the Appellant of all these Appeals, who are original Accused Nos. 1, 2, 4, 5 and 6 respectively (A-1, A-2, A-4, A-5, A-6, for short) are convicted for commission of offences punishable under Sections 489A, 489B, 489C read with Section 120B of the Indian Penal Code (“IPC” for short), and all of them are sentenced to suffer imprisonment for life and fine of Rs.3000/- i.d. RI for 3 months for commission of the offence punishable under Section 489A IPC, imprisonment for life and fine of Rs.3000/- i.d. RI for 3 months for commission of the offence under Section 489B IPC, RI for 5 years and fine of Rs.1500/- i.d. RI for 1 ½ months for the offence under Section 489C IPC and RI for 6 months and fine of Rs.1000/- i.d. RI for 2 months for commission of the offence punishable under Section 120B IPC. It is also ordered that all the sentences, imposed upon the accused persons, shall run concurrently.

2. The prosecution case as disclosed from FIR and unfolded during trial is as under:

2.1. PW-10, Subhashbhai G. Trivedi, Assistant Commissioner of Police, Crime Branch, Ahmedabad City, received a secret information on 1.12.2000 to the effect that one Kavindra @ Kavit Vishnubhai Panchal was to pass in the afternoon from Vasna via Anjali Cinema through Dharnidhar Derasar (Jain Temple) with fake currency notes of the denomination of Rs.500 to put the same in circulation. After receiving the said information, he summoned Police Officers, namely, PW-11, R.C.Pathak – PI, J.D.Chudasama, Dhananjay Waghela and D.H.Goswami and other police personnel and informed them of the information so received and directed R.C.Pathak, PI to summon panchas, and after arrival of the panchas, the panchas were also informed about the information so received, and their consent to act as panchas was also taken and thereafter preliminary panchnama was prepared. It is also the case of the prosecution that between 3:00 p.m. and 3:30

p.m., the preliminary panchnama was prepared and at 3:30 p.m., all the police officers along with the panchas left the office in a Government vehicle and reached near Anjali Cinema, and after hiding the vehicles, from the crossroad, they walked towards Dharnidhar Derasar (Jain Temple) and after walking about 200 steps, all the persons got scattered and took their position as decided earlier. PW-10, ACP, had an information that Kavit Panchal was to come on that road on LML Vespa Scooter bearing registration No. GJ-1-AA-871, and therefore, all the persons were keeping vigil and the vehicles were checked, during which time the aforesaid Scooter was seen coming from Anjali Cinema towards Dharnidhar Derasar about 4:15 p.m., and on spotting the said vehicle, by giving the signal to the members of the raiding party, PW-10, ACP, and panchas cordoned the scooter driver. After introducing himself, the name and address of the said Scooter driver was inquired, who informed his name to be Kavit alias Kavindra Panchal and on carrying out the search in the presence of the panchas, from

the pocket of his trouser one bundle of currency notes of the denomination of Rs.500 was recovered and as the said person had tucked his shirt inside his trouser, 6 bundles of currency notes of the denomination of Rs.500 were recovered from a plastic bag and said notes were found to be fake and the said fact was also stated by the said person Kavit Panchal. These 800 notes and another cash of Rs.205/-, one pager of Motorola Company and one Mobile phone were also recovered from the person. An inquiry about the name and address of the person from whom he had acquired the packet of currency notes was made. Thereafter those currency notes were put in a plastic bag and the plastic bag was sealed wherein a note containing the signatures of the panchas was also kept. Seal of Inspector of Police, DCB Crime, Ahmedabad City was affixed and the Scooter, pager and mobile phone were also seized and a detailed panchnama was made later on. The complaint was given by PW-1, Devendragiri Himmatgiri Goswami, before R.C.Pathak, PI.

2.2. It is the further case of the prosecution that on interrogation of A-1, Kavindra, he had taken the police officials to Aastha Surgical Hospital at Vasna Circle and showed a person to R.C.Pathak, PI and on inquiring the name and address of the said person, he stated his name to be Manish Dinkerrai Trivedi (A-2). On making inquiry from him, he took out a bundle of currency notes of the denomination of Rs.500 from his trouser and the same was seized for investigation and thereafter the special room was also searched in presence of the panchas. It is further case of the prosecution that on the strength of the information received by the police officials, the members of the raiding party raided Bungalow No. 3/A of Moti Sagar Society, Near Shantivan on 2.12.2000 and in the passage of the lobby of the said building, three persons were found enjoying liquor party and in the drawing room two persons named Kishoresinh Jashwantji Jadeja (A-3) and Kesrisinh

Rathod (A-4), were present and they were informed by R.C.Pathak, PI, about the arrest of A-1, Kavit Vishnu Panchal and A-2, Manish Trivedi, with fake currency notes of the denomination of Rs.500. During the course of the inquiry, A-4, Kesrisinh Rathod, voluntarily took the raiding party to the first floor of his house and by opening the cupboard of the personal room, took out 10 bundles of currency notes of the denomination of Rs.500, containing 990 notes amounting to Rs.4,95,000/- were recovered. On carrying out the search of the person of Kishoresinh, a mobile phone of Nokia Company was also recovered but no other incriminating article was recovered and the panchnama giving all the necessary details was prepared in presence of panchas. An offence for consumption of liquor was also registered.

2.3. It is the further case of the prosecution that during the course of investigation, A-5, Noor Mohmed alias Yakub Saiyed, was arrested on 6.12.2000, A-6, Shambhubhai Desai, was arrested on 10.12.2000 and Shambhubhai voluntarily took

out two bundles of fake currency notes of the denomination of Rs.500 which were seized.

2.4. A complaint for the aforesaid incident was lodged by PW-1, Devendragiri M. Goswami, at DCP Police Station, Ahmedabad against all the accused persons.

2.5. During the course of investigation, it was revealed that A-5, Noor Mohmed @ Bhaiyya and the absconding accused Bhavsinh Rathod are convict prisoners undergoing sentence at Central Jail, Sabarmati, Ahmedabad. Both of them were taken to Civil Hospital for treatment. They met A-3, Kishoresinh Jashwantsinh Jadeja, A-4, Kesrisinh @ Kishoresinh Bhavsinh Rathod and the absconding accused Salim Noor Mohmed in Civil Hospital, and hatched conspiracy to circulate fake currency notes of the denomination of Rs.500. In furtherance of the conspiracy, the absconding accused Salim Noor Mohmed obtained fake currency notes of the denomination of Rs.500 and gave them

to A-4, Kesrisinh @ Kishoresinh Bhavsinh Rathod and A-3, Kishoresinh Jadeja, who in turn gave them to A-2, Manish Dinkerrai Trivedi, who in turn, gave the same to A-1, Kavit and A-1, Kavit in turn gave the same to A-6, Shambhubhai. During the course of investigation, the fake currency notes recovered from the accused under the panchnama were sealed and then sent to FSL for analysis. On receipt of FSL report indicating that all the currency notes were fake and as incriminating evidence was found against all the accused, charge sheet was filed against all the accused persons for commission of the offences punishable under Sections 489-A, 489B, 489C read with Section 120B IPC in the Court of learned Metropolitan Magistrate, Court No.11, Ahmedabad.

2.6. As the offences with which accused persons were charged are exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate committed the case to the Sessions Court of Ahmedabad City.

2.7. On committal, the learned Additional Sessions Judge, Ahmedabad City, to whom the case was made over for trial, framed charge against all the accused for commission of the offences punishable under Sections 489A, 489B, 489C read with Section 120B IPC. All the accused persons pleaded not guilty to the charge and claimed to be tried. Therefore, they were put to trial by the learned Additional Sessions Judge, Ahmedabad City in Sessions Case No. 67 of 2001.

2.8. In order to bring home the charge levelled against the accused, the prosecution has examined as many as 12 witnesses and relied upon their oral testimonies, the details of which have been narrated in first part of paragraph 2 of the impugned judgment and order. They are as under:

PW No.	Name and Status	Exhibit	Page No.
1	Devendragiri H. Goswami, Police Officer	29	95
2	Rushiraj B. Bhavsar, Panch witness	43	117

PW No.	Name and Status	Exhibit	Page No.
3	Arunbhai Shantilal, Panch witness	44	123
4	Jayantilal K. Patel, Panch Witness	45	129
5	Kiritbhai B. Patel, Panch Witness	46	133
6	Rajubhai L. Waghela, Panch witness	47	137
7	Nimesh C. Shah, Panch witness	48	141
8	Dhananjaysinh S. Waghela, Police Officer	49	145
9	Vinay B. Bharwad, Panch witness	51	167
10	Subhashbhai G. Trivedi, Police Officer	57	173
11	Rajeshkumar C. Pathak, Police Officer	66	195
12	Mayankkumar M. Jani, Scientific Officer, FSL, Ahmedabad.	78	249

2.9. To prove the culpability of the accused, the prosecution has also produced a number of

documents and relied upon the contents of the same, the details of which are mentioned in second part of paragraph 2 of the impugned judgment. The relevance of those documents would be discussed hereinafter in this judgment as and when required.

2.10. After recording of the evidence of the prosecution witnesses was over, the trial Court explained to the accused the circumstances appearing against them and recorded their further statements under Section 313 of the Code. In their further statements, the accused denied the case of the prosecution in its entirety. They have stated that a false case has been filed against them and no fake currency notes were recovered from them. However, they have neither produced any evidence nor did they examine any witness in support of their defence.

2.11. On appreciation, evaluation, analysis and scrutiny of the evidence on record, the trial Court has come to the conclusion that the prosecution has successfully established the

complicity of all the accused except A-3. The prosecution has established that the notes which were recovered from A-1, A-2, A-4 and A-5 were fake currency notes. It was also held that all the accused except A-3, hatched a conspiracy to circulate the fake currency notes of the denomination of Rs.500 and in furtherance of the conspiracy, they have circulated the currency notes from one accused to another and thereby tried to put the fake currency notes in circulation in public, and therefore, the prosecution has established the complicity of all the accused except A-3 for commission of the offence punishable under Sections 489A, 489B, 489C read with Section 120B IPC, and all the accused except A-3 have been convicted and sentenced of the said offences accordingly, to which the reference is made in earlier paragraph of this judgment, which has given rise to the instant five Criminal Appeals at the instance of A-1, A-2, A-4, A-5 and A-6.

3. Messrs Dharmesh D. Nanavati, Jal Soli

Unwala, J.M.Panchal and Adil Mehta, learned advocates appearing for the respective accused have raised several contentions, which are summarized as under:

(i) Independent witnesses have not supported the prosecution case and only on the basis of the evidence of police officers conviction has been recorded and, therefore, close scrutiny is required.

(ii) Evidence of police officers should be of sterling nature which would inspire confidence in the court.

(iii) Police officers have not discharged their duties properly inasmuch as there is no investigation nor any evidence to show the source, base or the roots of counterfeiting the muddamal notes.

(iv) Investigating Agency has been satisfied only with the possession of counterfeit notes which cannot attract provisions of Section 489A and 489B IPC.

(v) There is no evidence regarding the meeting of minds to bring home conspiracy and, therefore, also the investigation cannot be said to be above board and evidence of police officers cannot be said to be of sterling nature.

(vi) The investigation also does not reveal any source or base or root of the entire case nor does it show any evidence as to from where the whole case originated and as to where did the counterfeiting take place.

(vii) Against the A-5 there is no charge of conspiracy or possession of fake currency notes.

(viii) With regard to the evidence regarding Section 120B IPC - conspiracy, except for the confessional statements of the accused, when in custody, there is no evidence worth the name to prove conspiracy.

(ix) In the cross examination of P.W.11,

RC Pathak, PI, Ex.66, page 195 of the paper book, the police officer has stated that the evidence of conspiracy could come out only during the interrogation in custody and, therefore, the same is hit by Section 26 of the Indian Evidence Act, which cannot be admissible into evidence.

(x) The incident has taken place on 1.12.2002 and the muddamal has been sent to FSL on 28.12.2002 and in the meantime, there is no evidence to suggest that the muddamal was in safe custody and has not been tampered with and no witnesses have been examined with respect to the same.

(xi) As far as A-2 – Manish Dinkerrai Trivedi is concerned, there is no evidence on record to suggest any involvement in conspiracy for counterfeiting the currency notes nor is there any evidence to suggest the circulation of the said counterfeited notes. In that view of the matter also, he could not have been convicted under Sections

489A and 489B IPC. With respect to Section 489C IPC also, the entire story put up by the prosecution against the A-2 is not believable since he was admitted in the hospital and had undergone a surgery on the leg which has been brought on record from the evidence of PW-9, Ex.51, at page 167, which substantiates the say of A-2. It is highly unbelievable that A-2, though operated just a day before, would be carrying the muddamal notes under his pant in the hospital after his operation.

(xii) As far as A-6 is concerned, he has been found in possession of certain torn muddamal currency notes and that too after 10 days and in this view of the matter also, it is highly unbelievable that a person would keep torn counterfeit currency notes with him which would be of no use to him.

(xiii) As far as the conviction under Section 489B IPC is concerned, except for the statement of the accused, there is nothing on record to bring home the guilt and,

therefore, also the accused could not have been convicted for the offence under Section 489B IPC.

(xiv) Even with regard to the conviction for the offence under Section 120B IPC, there is no evidence on record except for the evidence in the nature of confessional statements of the accused.

(xv) Even the panch witnesses who have carried out the panchnamas have not supported the prosecution case which suggest the nature of investigation carried out by the investigating agency and the nature of evidence sought to be produced on record to bring home the guilt of the accused for the offences for which they have been convicted. If the confessional statements in the panchnamas cannot be admissible into the evidence in view of Sections 25 and 26 of the Indian Evidence Act, then nothing remains especially when the very same panchnamas have not been proved by the prosecution.

(xvi) The trial Court has wrongly taken the aid of Section 10 of the Indian Evidence Act to bring home the guilt of the accused but has very glaringly erred by not appreciating that the provisions of Section 10 of the Indian Evidence Act cannot be taken recourse of if the accused are arrested.

3.1. In support of the aforesaid contentions, they have relied upon two reported decisions of the Supreme Court in the case of (i) State (N.C.T. of Delhi) v. Navjot Sandhu, AIR 2005, SC, 3820 and (ii) State of Gujarat v. Mohammed Atik and others, AIR 1998 SC 1686.

3.2. On the aforesaid premises, it is submitted that the impugned judgment and order is against the evidence on record, therefore, the same deserves to be quashed and set aside by acquitting all the accused of the offences with which they were charged. They, therefore, urged to allow the appeals.

3.3. In the alternative, it is submitted that

if at all this Court comes to the conclusion that fake currency notes were recovered from A-1, A-2, A-4 and A-6, they may be convicted only for the offence punishable under Section 489C, in that case, the maximum punishment prescribed for commission of the offence under Section 489C is R.I. for 7 years and fine, or both. In the instant case, for the offence punishable under Section 489C, the trial Court has imposed RI of 5 years and fine of Rs.1500/- i.d. RI for 1 ½ months, which has been undergone by almost all the accused except Accused No.3. Therefore, all the accused may be convicted for the offence punishable under Section 489C IPC and accordingly conviction recorded against all the accused may be modified by acquitting them of the offences punishable under Sections 489A and 489B IPC and convicting those accused from whom fake currency notes were recovered for the offence punishable under Section 489C. They urged to allow the appeals partly by modifying the order of conviction and sentence. They, therefore, urged to pass appropriate orders in this regard.

4. In counter submission, Mr. R.C.Kodekar, learned APP for respondent-State of Gujarat, has contended that there is voluminous evidence against the accused for commission of offences under Sections 489A, 489B, 489C read with Section 120B IPC as A-5, Noor Mohammad and the absconding accused Bhavsinh Rathod, when they were taken to Civil Hospital for treatment, from Sabarmati Jail, hatched a conspiracy with A-3 and A-4 to process the fake currency notes and put them in circulation and A-1, A-2, A-4 and others were caught red-handed with counterfeit currency notes of the denomination of Rs.500 worth lakhs of rupees. It is also asserted by him that when A-1, A-2, A-4 and A-6 were found with fake currency notes of the denomination of Rs.500, in bulk, worth lacs of rupees, a presumption may arise under Section 3 of the Evidence Act that they have knowingly performed the act of process the counterfeiting of currency notes, received the fake currency notes knowing fully well that those are fake currency notes and kept possession with them and also circulated them from one accused

to another. A-5, Noor Mohmed is the master-mind of the conspiracy though from him no currency notes were recovered. He and the absconding accused Bhavsinh Rathod hatched a conspiracy with all the accused persons to process the fake currency notes and put the same in circulation. According to him, it is true that panchas have turned hostile but the evidence of the police officers, who have no axe to grind against the accused persons, is so glaring and of sterling quality that the deficiency in the prosecution, if the turning of panchas hostile can be called so, has paled into insignificance. Therefore, there is no reason to discard the evidence of the police officers.

4.1. Mr. R.C.Kodekar, learned APP has also pointed out that A-1, A-2, A-4 and A-6 were found in possession of fake currency notes, which is proved by the evidence of police officers and no plausible explanation is coming from them as to where from they have obtained the fake currency notes. Silence on the part of the accused in

such circumstances would by itself be a telling circumstance which would weigh against them in the consideration of the prosecution evidence led against them. According to him, prosecution has successfully established the complicity of the accused for commission of the offences punishable under Sections 489A, 489B, 489C read with Section 120B IPC.

4.2. In support of the aforesaid contention, he has relied upon the decision of the Supreme Court in the case of Ponnuswamy v. State, 1995 Cr.L.J, page 2658.

4.3. Mr. Kodekar, learned APP, has also asserted that the offence of counterfeiting currency notes is a crime against the Nation and it will affect the economy of the country adversely and, therefore, no leniency can be shown against any of the accused persons. He has submitted that there is no merit in the appeals filed by the accused and, therefore, same deserve to be dismissed. He, therefore, urged to dismiss all the appeals.

5. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a compete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read and re-read by the learned advocates for the parties with reference to broad and reasonable probabilities of the case. In light of the caution sounded by the Supreme Court while dealing with criminal appeals, this court has examined the entire evidence on record for itself independently of the trial Court and considered the arguments advanced on behalf of the accused persons and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence.

6. In order to prove that the currency notes recovered from A-1, A-2, A-4 and A-6 were fake, the prosecution has examined and relied upon oral testimony of P.W.12, Mayankkumar M. Jani,

Scientific Officer, FSL, Ahmedabad, Ex.78. He has, inter alia, testified that he has received 5 parcels, in sealed condition, for analysis. The said parcels contained currency notes of the denomination of Rs.500. He has analyzed all the currency notes and on analysis he found that all the currency notes are fake. According to him, even the torn currency notes are also found to be fake. He has produced a report in this regard, which is at Ex.75.

7. On a conjoint reading of the oral testimony of P.W.12, Mayankkumar M. Jani, Ex.78 and FSL report, Ex.75, it is clear that the currency notes recovered from A-1, A-2, A-5 and A-6 were fake currency notes and thus the prosecution has duly proved that the currency notes which were recovered from A-1, A-2, A-5 and A-6 were fake. It may be noted that even the learned advocates for the accused have also not disputed the said aspect. However, this Court has just with a view to record its satisfaction, examined this piece of evidence.

8. This takes us to examine as to whether the prosecution has proved, beyond reasonable doubt, that A-5, Noor Mohmed and absconding accused Bhavsinh Rathod, who were convict prisoners undergoing sentence at Central Jail, Sabarmati, Ahmedabad, when they were taken to Civil Hospital for treatment from Sabarmati Jail, A-3, Kishoresinh Jadeja, A-4, Kesrisinh Rathod and absconding accused Salim Noor Mohmed met them in the Civil Hospital and hatched conspiracy to process fake currency notes of the denomination of Rs.500 and circulate the same. A-1, A-2, A-4 and A-6 were found with fake currency notes when they were intercepted and apprehended by the police officers.

8.1. In this connection, the prosecution has examined and relied upon the evidence of Police Officers, i.e., P.W.1, Devendragiri M. Goswami, Ex.29, P.W.8, Dhananjaysinh S. Waghela, Ex.49, P.W.10, Subhashbhai G. Trivedi, Ex.57 and P.W.11, Rajeshkumar C. Pathak, Ex.66. All the above witnesses were discharging their duties with the

Crime Branch, Ahmedabad City, at the relevant time.

9. From amongst the above named police officers, it would be relevant to first advert to the evidence of P.W.11, RC Pathak, who was the investigating officer and who was present from the very beginning and had taken active part in the investigation till the filing of charge sheet. He was the police officer who was present during the entire episode from receiving secret information with regard to the counterfeit currency notes being carried by the accused, preparing panchnama, arresting of accused and till the charge-sheet is filed before the competent court. Therefore, it would be appropriate to discuss his evidence in extenso.

9.1. P.W.1, Rajeshkumar C Pathak, Ex.66, has, inter alia, deposed that on 1.12.2000, he was discharging duties as a Police Inspector, Crime Branch. On that day he was present at his office when the then Assistant Police Commissioner, Crime Branch, S.G. Trivedi, through a member of

the staff, had called him in his chamber at 14:30 hours. Immediately after calling him, he had called PSI Goswami, PSI Waghela, PSI Chudasama of the Crime Branch staff and other staff members viz., Madhusinh, Naarsinh, Ashokbhai, Shaileshbhai, etc., and had informed all of them about the details of the secret information. He has further deposed that the information that he had received was to the effect that on that day in the evening, an individual named Kavit alias Kavindra Vishnubhai Panchal, carrying counterfeit currency notes of the denomination of Rs.500 in his possession was en route Vasna going to come on the Anjali Cinema road and proceed towards Dharnidhar Derasar on his LML Scooter No.GJ.1. AA.871 and was going to circular those currency notes as genuine notes in the market. After acquainting them regarding such information, a raid was immediately planned and upon instructions being issued to him to call panchas he had immediately sent the then Police Constable Bharatsinh to call panchas and in a short time he had called the panchas whereupon ACP Trivedi had

acquainted the panchas with the secret information received by them and they had shown willingness to act as panchas. Thereafter they had searched each other in connection with the raid and after due verification, a preliminary panchnama was drawn from 15:00 to 15:30 hours. He has identified the signature of the panchas as well as his signature below the 'before me' endorsement in the panchnama Ex.67 and has stated that the same is in the handwriting of his Crime Branch Writer Shaileshbhai.

9.2. He has further deposed that after preparing the preliminary panchnama, the members of the raiding party ACP Trivedi, he, PSI Goswami, PSI Waghela, Chudasama and from the staff members police Constables Ashok, Shailesh, Madhubhai, Pravinbhai, Valji, Dhulabhai, Narsinh, Vikramsinh and their driver Waghela as well as the two panchas set out in two vehicles, one TATA Mobile and ASBG Gypsy for the purpose of conducting raid.

9.3. He has further deposed that they went

from Gaekwad Haveli and en route Jamalpur, Vegetable Market, Sardar Bridge, Mahalaxmi Crossroads reached Anjali Crossroads. On approaching near the place mentioned in the secret information, they entrusted the vehicles to the drivers and all the members of the raiding party along with the panchas proceeded on foot from Anjali Crossroads to the road going towards Dharnidhar.

9.4. He has further deposed that when they had covered a distance of about 200 steps, under ACP Trivedi's and his guidance, the members of the staff spread out and positioned themselves at different places. He and ACP Trivedi and the Panchas had stood on the left side of the road in such a manner that they could clearly see the vehicles coming from Vasna side. Under Trivedi's and his guidance all were instructed to ascertain and check only the LML Scooters.

9.5. He has further deposed that in the meanwhile at 16:15 hours he had sighted a grey coloured LML Scooter coming from the direction of

Vasna via Anjali crossroads to Dharnidhar, as he was ahead of everyone, he had become alert to observe the number and hence, as soon as the scooter came within a distance of 10 to 15 metres, as its number appeared to be the number stated in the secret information i.e., GJ.1.AA. 871, ACP Trivedi had alerted the staff members positioned nearby and through gestures told them to stop it. In the meanwhile, he and Trivedi, along with the panchas, had stopped the scooter on the left side of the road and the members of the raiding party had also come close by and they had also seen the number of the scooter, etc. After making the scooterist get off the scooter, they had disclosed their identities as well as that of the panchas and had informed him about the secret information received by them saying that they had information that he had counterfeit currency notes of the denomination of Rs.500 and that there were panchas also. On asking him to produce the same, he had taken out two bundles of currency notes of the denomination of Rs.500 one from each of the two pockets of his pant and

produced the same. On making him take out part of the shirt that he had tucked in his pant and ascertaining further through the panchas, a plastic bag with six bundles of counterfeit currency notes of the denomination of Rs.500 were found. The name of the said individual was ascertained by asking his name in the presence of panchas and he had stated that his name was Kavit alias Kavindra Vishnubhai Panchal, resident of Sukruti Flat, Nehrunagar, Manekbaug. On carrying out physical search of the individual, a pager of the make of Motorola Company, a black-blue coloured Trium Mitsubishi Company Mobile and a maroon coloured purse containing Rs.205/- in genuine currency notes were found from the back pocket of his pant. On counting the currency notes in the presence of panchas, the total came to Rs.4 lakhs and a detailed panchnama was drawn after ascertaining the series-wise numbers. The panchas had counted the currency notes and verified the same. He has further stated that in view of the repeated instructions of the Reserve Bank, they knew the distinction between a

genuine and counterfeit currency note and on the spot itself they knew that the currency notes were counterfeit. Hence, to seal the said bundles of currency notes and seize them on the spot, the bundles of currency notes were placed on a board and by using a plastic bag it was made like a parcel and fully secured with a string. On the inner side, slips bearing the signatures of the panchas as well as his signature were placed and similar slip was placed outside and a seal of Inspector of Police, DCB Crime, Ahmedabad City was affixed thereon and from the spot itself he had talked to the PSO on his mobile and ascertained the Crime Register number from the very beginning and noting to that effect is borne out from the slips which bear the signatures of the panchas. The mobile phone, Motorola Company pager, currency notes of Rs.205/- telephone diary and the scooter No. GJ.1.AA.871 used in the commission of the offence were seized by drawing panchnama. The panchnama had been written by their writer Shaileshbhai as stated by the panchas, and he had signed the same which has

been produced vide Ex.67. This panchnama was completed at 20:30 hours and considering the seriousness of the crime, Kavit alias Kavindra Panchal who had been apprehended on the spot, was arrested there and then in connection with the offence and under the instructions of ACP Trivedi, PSI, DH Goswami had lodged the complaint before him. The said complaint has been produced vide Ex.30 wherein he had signed below the 'before me' endorsement. The same bears the signature of DH Goswami as the complainant.

9.6. He has further deposed that in view of the secret information, it appeared that it is possible to uncover a large number of counterfeit currency notes and hence Kavit was interrogated on the spot and in connection with the same, he had disclosed the names of other individuals in connection with the counterfeit currency notes of the denomination of Rs.500 whereby the curtain had been raised from the offence. Therefore, in view of the provisions of Section 120B IPC read with Section 10 of the Evidence Act, as one

conspirator was disclosing information regarding another conspirator, then to reach the other conspirator the accompanying PSI Waghela was straight away sent from the spot along with the seized muddamal, the complaint, as well as a yadi issued to the PSO to the office of the Crime Branch for registration of the offence whereas as the arrested accused Kavit alias Kavindra willingly offered to show the place where the remaining bulk of currency was, he, ACP Trivedi, Goswami and other members of the staff had gone with him to the Aastha Hospital near Vasna crossroads where one Manish Dinkerrai Trivedi was undergoing treatment on the second floor of the hospital. They had also brought along the earlier panchas and disclosed their identity and that of the panchas to said Manish and asked him about his having counterfeit currency notes of the denomination of Rs.500 whereupon from the hospital room where he was admitted, said Manish took out a bundle of counterfeit currency notes of the denomination of Rs.500 from the pocket of the pant that he was wearing and produced the

same. The said notes also appeared to be counterfeit as compared to genuine notes on the basis of the colour and design. The said notes were counted and they were found to be 100 notes amounting to Rs.50,000/- The said notes were counted in the presence of panchas and the serial numbers were verified and the bundle of counterfeit notes was placed on a cardboard and placed in a plastic bag wherein a slip bearing signatures of the panchas as well as his signature was placed and a similar slip as placed in the plastic bag was affixed on the bundle which was properly secured with a string and after affixing the seal of the the Inspector of Police, DCB Ahmedabad City on it, the same was seized. The said panchnama was completed at 23:50 hours on 1.12.2000 and the accused was arrested while he was undergoing treatment and a Police Sub Inspector and other persons were deputed to keep strict watch over him. He has identified the handwriting on the panchnama Ex.68 to be that of his writer Vikramsinh and has stated that the same was recorded as stated by the panchas and

that the contents thereof were true. He has also identified his signature as well as that of the panchas thereon.

9.7. He has further deposed that upon asking said Manish his name and address in the presence of panchas, he had stated that his name was Manish Dinkerrai Trivedi, resident of Harihar Society, Vasna, Ahmedabad. He has produced the report Ex.69 whereby the complaint had been forwarded for registering the offence through Waghela and stated that the same was in the handwriting of Police Constable Shailesh. He has admitted the contents of the report and his signature thereon. Said Manish Dinkerrai Trivedi was interrogated on the spot whereupon he gave details of the remaining currency notes which revealed that he had received he said currency notes a few days ago from another accused at Motinagar Society at Shantivan and, therefore, the raiding party went directly from Aastha Hospital to the place disclosed by Manish and upon reaching there, they called two panchas from

Shantivan. He himself had called the panchas and had acquainted them with the facts in connection with the raid and their consent to act as panchas was obtained. Thereafter, all the members of the raiding party along with the panchas had reached the residential premises of Kesrisinh alias Kishoresinh Bhavsinh Rathod at Bungalow No.3, Motisagar Society at 0:30 hours on 2.12.2000 where around three persons were sitting in the lobby of the house and were enjoying a liquor party. In order to see that separate proceedings are initiated against them, ACP Trivedi had entrusted this work to PSI Waghela. All the members of the raiding party along with him, opened the inner door and entered inside along with the panchas and firstly disclosed their identities as well as that of the panchas to the two persons who were sitting on the sofa in the drawing room and informed them that they had come there with the purpose of carrying out a raid in connection with counterfeit currency notes of the denomination of Rs.500. Upon asking their names and addresses, one person said that his name is

Kishoresinh Bhavsinh Rathod alias Kesrisinh whereas the other person said that his name was Kishoresinh Jadeja, resident of Moti Khadoi, Taluka Anjar, District Kutch. On informing that this was a Crime Branch raid in connection with stock of counterfeit currency notes and on calling upon them to produce such stock, Kishoresinh Bhavsinh Rathod took the members of the raiding party along with the panchas to the upper part of this house and from the safe in his bedroom took out ten bundles of counterfeit currency notes of the denomination of Rs.500 from a plastic bag and produced the same. On verifying under the light, the series on those currency notes were close to the series of the notes seized earlier and the colour and design and embossed mark of the said currency notes appeared to be different than genuine notes and hence they were sure that the said currency notes were counterfeit currency notes. When counted in the presence of panchas, the bundles were found to consist of in all counterfeit currency notes amounting to four lakhs and ninety-five thousand

rupees. All the said notes were carefully counted along with the serial numbers and then placed on a cardboard and a slip bearing the signatures of the panchas as well as his signature was placed on them and a parcel was made by packing the same in a plastic bag and slip bearing the signatures of the panchas was placed on the same and after firmly securing the parcel with a string, a seal of Inspector of Police DCB Ahmedabad City was affixed on the same. Further, on carrying out physical search, a Nokia mobile phone was seized from Kishoresinh Bhavsinh Rathod. He had also produced proof of residence in the form of ration card and electricity bill, which are also seized. The electricity bill was in the name of Kishoresinh Rathod's mother whereas the ration card had the names of his family members. The said panchnama was completed at 06:00 in the morning and was produced vide Ex.70. He has further deposed that the same was in the handwriting of his writer Vikramsinh and the same had been recorded as stated by the panchas. He has further deposed that the panchas have signed

in his presence and he has signed below the 'before me' endorsement.

9.8. He has further deposed that the plastic bag from which Kishoresinh Rathod had produced the counterfeit currency notes had the markings of Kutch Anjar and the same was also seized in connection with the investigation of this offence. Both the aforesaid Kesrisinh alias Kishoresinh Bhavsinh Rathod and Kishoresinh Jashwantsinh Jadeja were arrested at 06:05 and 06:15 hours respectively. After arresting the accused, the same were entered in the arrest register for the purpose of investigation. MOB record was prepared and as per the ruling of the Supreme Court, their relatives were informed regarding their arrest and the arrest memo form was signed in accordance with the rules. Photographs were taken for preparing the charge sheet in connection with the offence. As during the course of investigation it had been revealed that the offence was of immense importance and serious in nature as well as was one which would

have the effect of disrupting the economy of the country, the higher officer had been informed regarding the same.

9.9. He has further deposed that as he was the investigating officer, he had obtained remand in connection with the offence. During remand, accused Kavit alias Kavindra Vishnubhai Panchal had during the course of interrogation, revealed further details regarding the remaining bulk of counterfeit currency notes and hence in the presence of panchas, a preliminary panchnama was drawn as stated by them and taking them along, A-6, Shambhubhai Nagjibhai Desai was arrested in connection with the offence on 10.12.2000 at 16:15 hours. As the said accused had shown willingness to disclose details regarding the counterfeit currency notes in his possession in the presence of panchas, two panchas were called at the Crime Branch. For making a discovery panchnama under Section 27 of the Evidence Act as disclosed by the arrested accused, a preliminary panchnama was drawn from 18:00 to 18:20 hours on

10.12.2000 and in continuation of said panchnama as shown by the accused, they had proceeded from the Crime Branch Office and en route Gaekwad Haveli, Bhadrakali Temple, Nehru Bridge, Usmanpura, AEC Office Naranpura Zone, Ghatlodia reached his residence at 177 Hirabaug Society. Inside his residential house, he had gone ahead and from the loft of the toilet in the inner room, he had taken out a tin trunk and produced a bundle of notes of the denomination of Rs.500 from under the clothes. The said notes were also different from genuine currency notes in terms of colour, design and embossing and hence it was clear that the same were counterfeit. The other bundle produced along with it also had similar counterfeit currency notes of the denomination of Rs.500. Along with the aforesaid he had also produced torn pieces of counterfeit currency notes of the same series. There were 40 pieces of counterfeit currency notes of the same series. On counting the intact counterfeit currency notes in the presence of panchas, the same amounted to Rs.72,000/- The said currency notes were properly

scrutinized on the spot, in the presence of panchas and after counting them and checking their serial numbers, complete details were recorded in the panchnama and the bundles of counterfeit currency notes were placed on a cardboard and a slip bearing the signatures of the panchas was placed thereon and the same was then placed in a plastic bag and a slip bearing the signatures of the panchas was placed on it and the same was fully secured by tying a string around it and a seal of Inspector of Police, DCB Ahmedabad City was affixed thereon and the entire muddamal was seized. The panchnama was completed at 20:45 hours. The panchnama is produced by him and the same has been exhibited vide Ex.71 along with objection. He has further deposed that during the course of investigation, on obtaining details as to the source of the counterfeit currency notes, it has come to light that Bhavsinh Rathod had been serving sentence at the Sabarmati Jail at Ahmedabad as well as Noor Mohmed alias Bhaiyya Yakubbhai Saiyed had earlier been arrested on several occasions in

connection with offences pertaining to counterfeit currency notes and both of them were lodged at Sabarmati Jail and Bhavsinh Rathod, who, while serving sentence in connection with a Narcotics Case, had been shifted to Sabarmati Jail on account of his ill-health and while he was serving sentence there, accused Noor Mohmed alias Bhaiyya Yakubbhai Saiyed who had been arrested in connection with an earlier anti-terrorist case against the State of Gujarat involving counterfeit currency notes of rupees eight lakhs was lodged at Sabarmati Jail as an under-trial prisoner. Both Bhavsinh Rathod and Noor Mohmed Bhaiyya belong to the same village Sami, District Patan, Mehsana and had stayed in the hospital at Central Jail while undergoing treatment. Moreover, to circulate the counterfeit currency notes of the denomination of Rs.500, as planned by them, both had come at the same time to the Civil Hospital from the Sabarmati Jail under the pretext of undergoing treatment, a few days prior to the offence being uncovered. And there, the accused, who had earlier been arrested

in connection with this offence, Kesrisinh alias Kishoresinh Bhavsinh Rathod, Kishoresinh Jashwantsinh Jadeja and Salim, son of Noor Mohmed Bhaiyya, had also gathered together at the Civil Hospital. In order to ascertain the presence of Noor Mohmed Bhaiyya and Bhavsinh Rathod in this regard, during the course of investigation, he had obtained the jail record to produce the same as evidence, as under the provisions of Section 35 of the Evidence Act, where a person has during the course of his official duty made any entry in any record such document can be produced as evidence. He has produced the same before the court vide Marks 23/8 and 23/9 and has also produced the extracts of the register given by the Medical Officer regarding the treatment provided to both the said accused.

9.10. He has further deposed that a transfer warrant had been obtained in respect of accused Noor Mohmed Bhaiyya Saiyed and he had been arrested in connection with this offence on

6.12.2000 at 16:45 hours. He has produced the transfer warrant vide Ex.72 and has admitted the contents thereof as well as his signature on the same. During the course of investigation, from the facts disclosed by accused Kavit alias Kavindra, it had been revealed that part of the counterfeit currency notes in the sum of Rs.50,000/- had been given to one Bhupat R. Patel and hence efforts were made to arrest the said Bhupat as well as Salim Noor Mohmed who were involved in the conspiracy in connection with the offence, but they could not be found anywhere during the course of investigation. Therefore, in connection with the investigation, warrant was obtained under the provisions of Section 70 of the Code of Criminal Procedure and they were declared wanted in the Ahmedabad City Police Station as well as different police stations in Gujarat, whereas, accused Bhavsinh Dahyabhai Rathod who was undergoing imprisonment at Sabarmati Central Jail in connection with a Narcotics case was, as per the order of the Court, arrested in connection with this offence

at Central Jail on 12.2.2002 at 17:00 hours. During the course of investigation, statements of the raiding party staff were recorded on 12.12.2000. On 8.12.2000, statement of Dr. Vinay Bharwad of Aastha Hospital was recorded in connection with this offence and relevant papers were seized. Thereafter on 18.12.2000, the statement of the then Assistant Police Commissioner, Subhash G. Trivedi was recorded. During the course of investigation, the muddamal seized in connection with this offence was forwarded to the Forensic Science Laboratory. Earlier muddamal in the form of currency notes used to be sent to Devas Government Printing Press, however, under the orders of the Department such currency notes were henceforth to be sent to the Forensic Science Laboratory for investigation, as during the course of investigation in connection with some other offence, they had received such written instructions, therefore, pursuant to the same as well as under the orders of the Government Printing Press, such muddamal was sent to the

Forensic Science Laboratory. He has identified his signature on the muddamal forwarding report Ex.73 and has admitted the contents thereof. He has also produced and proved the muddamal acceptance receipt of the FSL vide Ex.74. The FSL report has been produced at Ex.75. Ex.58 is a letter received from the Reserve Bank. As there was sufficient evidence against the accused in connection with the offence in question, on 26.2.2001 charge sheet was submitted in the concerned court against the accused Kavit alias Kavindra Panchal, Manish Dinkerrai Trivedi, Kesrisinh Bhavsinh Rathod, Kishoresinh Karsansinh Jadeja, Shambhubhai Nagjibhai Desai and Noor Mohmed Bhaiyya Yakubbhai Saiyed whereas accused Salim Noor Mohmed Saiyed, Bhupat R. Patel were declared to be absconding. A supplementary charge sheet was submitted against accused Bhavsinh Dahyabhai Rathod on 14.2.2002. He has identified the accused in the Court. He has also identified the muddamal currency notes as well as mobile, pager, etc. He has also identified the slips attached to the muddamal.

10. The prosecution has thereafter examined and relied upon the evidence of P.W.1, Devendragiri H. Goswami, PSI, DCB Crime, Ex.29. He is the police officer who called panchas of the panchnama drawn on 1.12.2000, between 15:00 to 15:30 hours. He has testified that P.W.10, Subhash G. Trivedi had received the secret information with regard to A-1 coming with counterfeit currency notes on LML scooter. He has also testified that the scooter of A-1 was intercepted and he was arrested and during the search of the person of A-1, 8 bundles of fake currency notes of denomination of Rs.500 were seized from him. He has deposed that the above mentioned fake currency notes were recovered in presence of RC Pathak, PI and in presence of panchas. He is the police officer who has lodged the FIR. The said FIR is on record at Ex.30.

11. The prosecution has thereafter examined and relied upon the evidence of P.W.8, Dhananjaysinh S. Waghela, Ex.49. He was working as PSI at the relevant time and he was a member of the raiding

party. He has deposed that fake currency notes of Rs.4 lakhs, pager of Motorola Company, etc., were recovered from A-1. He has also deposed that from A-2, Manish Trivedi, who was admitted to Aastha Hospital, Vasna, during the course of search, fake currency notes of the denomination of Rs.500 totalling to Rs.50,000/- were recovered in presence of panchas and panchnama in this regard was prepared. He has further testified that during further investigation of Manish, they have received information about A-3 Kishoresinh Jashwantsinh Jadeja and A-4, Kesrisinh alias Kishoresinh Bhavsinh Rathod and, therefore, they were arrested and from A-4 fake currency notes of the denomination of Rs.500 totalling to Rs.4,95,000/- were recovered in presence of panchas and panchnama in this regard was also prepared.

12. The prosecution has thereafter examined and relied upon P.W.10, Subhash G. Trivedi, Ex.57. He was working as ACP, DCB Crime. He has testified that on 1.12.2000 he has received the secret

information that A-1 would be coming with counterfeit currency notes of the denomination of Rs.500 and, therefore, he conveyed the said secret information to P.W.1, P.W.8 and P.W.11 and thereafter he made necessary arrangement for laying trap and in his presence A-1 was intercepted and apprehended and from him fake currency notes of the denomination of Rs.500 were recovered.

13. It may be noted that so far as P.W.1, Devendragiri H Goswami, Ex.29, P.W.8, Dhananjaysinh S. Waghela, Ex.49 and P.W.10, Subhashbhai G. Trivedi, Ex.57 are concerned, they have stated the role played by them and their evidence is in consonance with the evidence of P.W.11, Rajeshkumar C. Pathak, Ex.66, whose evidence we have discussed in great detail and at length. Therefore, we deem it not necessary to refer to their evidence elaborately.

14. It is also required to be noted that all the above four witnesses, who were members of the raiding party and police officers working at DCB

Crime Branch, Ahmedabad City at the relevant time, were subjected to cross-examination at length and in great detail by the learned advocates of the accused. Lot many suggestions were put to them suggesting that Subhash Trivedi has neither received any information with regard to A-1 carrying fake currency notes of the denomination of Rs.500 nor that A-5, Noor Mahmed alias Bhaiyya and the absconding accused Bhavsinh Rathod are the convict prisoners undergoing sentence at Central Jail, Sabarmati, Ahmedabad and that both of them were taken to Civil Hospital for treatment from Sabarmati Jail and that A-3, Kishoresinh Jashwantsinh Jadeja, A-4, Kesrisinh alias Kishoresinh Bhavsinh Rathod and absconding accused Salim Noor Mohmed met them in the Civil Hospital and hatched conspiracy to circulate fake currency notes of the denomination of Rs.500, nor any fake currency notes were recovered from A-1, A-2, A-4 and A-6. They have repelled all the suggestions. The learned advocate of the accused tried his level best to get some piece of evidence in favour of the

accused from the cross-examination of these witnesses so that it can be contended that the evidence of the above witnesses cannot be relied upon and their evidence is impeachable. But all the police witnesses withstood the test of cross-examination successfully and nothing, even remotely suggesting, that the trap which was laid on the basis of the secret information was bogus nor any fake currency note was recovered from the above-mentioned accused persons.

15. On reappreciation, reanalysis, reevaluation and close scrutiny of the evidence of the above four witnesses, there is no manner of doubt that the secret information was received by P.W.10, Subhash Trivedi and on the basis of the said secret information they entrapped A-1 and from him information with regard to other accused persons was also received and thereafter from A-2, A-4 and A-6, counterfeit currency notes of the denomination of Rs.500 were recovered in huge quantity and, therefore, under panchnamas those fake currency notes were seized and sealed.

In view of the aforesaid evidence, it has to be held that A-1, A-2, A-4 and A-6 were found with counterfeit currency notes of the denomination of Rs.500 and they were arrested by the police officers.

16. By referring to the evidence of P.W.2, Rushiraj B. Bhavsar, Ex.43, P.W.3, Arunbhai Shantilal, Ex.44, P.W.4, Jayantilal K. Patel, Ex.45, P.W.5, Kiritbhai B. Patel, Ex.46, P.W.6, Rajubhai L. Waghela, Ex.47, P.W.7, Nimesh C. Shah, Ex.48 and P.W.9, Vinay B. Bharwad, Ex.51, who are panch witnesses, in whose presence fake currency notes were recovered from A-1, A-2, A-4 and A-6, it is contended by the learned advocates of the accused that they have turned hostile and have not supported the prosecution case and, therefore, according to them, since independent witnesses like the panch witnesses have turned hostile, the prosecution has failed to establish the basic fact that the fake currency notes were recovered from A-1, A-2, A-4 and A-6.

16.1. We find the aforesaid contention

absolutely meritless. It is well settled by catena of decisions of the Supreme Court that merely because the panch witnesses do not support the case of the prosecution, the case of the prosecution need not be thrown over-board as unreliable. It may be realized that the phenomenon of panch witnesses turning hostile to the prosecution is not unknown and is ever on the increase. It needs hardly to be emphasised that the decision of a case does not depend solely on the question whether the panch witnesses support the prosecution or turn their back on it. If the decision to the case were to depend solely on the testimony of panch witnesses regardless of the evidence of the police officers, in theory, it would be giving a right to veto to the panch as so far as the question of culpability of an accused is concerned, which is not permissible in criminal jurisprudence. It is well settled that without good ground being pointed out, testimony of police officers, if otherwise found to be true and dependable, cannot be discarded by the court on the ground that they are police officers. On

the facts and in the circumstances of the case, this Court finds that the testimonies of P.W.1, P.W.8, P.W.10 and P.W.11 not only inspire confidence but get corroboration from the other evidence on record and from the evidence of P.W.1, Devendragiri H. Goswami, Police Officer, P.W.8, Dhananjaysinh S. Waghela, Police Officer, P.W.10, Subhashbhai G. Trivedi, and P.W.11, Rajeshkumar C. Pathak, PI and investigating officer, the contents of the panchnamas Exs.67, 68, 70 and 71 with respect to recovery of fake currency notes from A-1, A-2, A-4 and A-6 respectively are proved.

16.2. In view of the aforesaid conclusion, according to us, the impact of the panchas turning hostile pales into insignificance as the evidence of P.W.1, DH Goswami, P.W.8, Dhananjaysinh S. Waghela, Ex.10, Subhashbhai G. Trivedi and P.W.11, Rajeshkumar C. Pathak, who are police officers and P.W.12, Mayankkumar M. Jani, Scientific Officer, FSL, Ahmedabad, Ex.78, are of sterling quality inspiring confidence and,

therefore, their evidence can be relied upon to come to the conclusion that A-1, A-2, A-4 and A-6 were found with fake currency notes when they were intercepted and apprehended by the police officers.

17. Having held that A-1, A-2, A-4 and A-6 were found with fake currency notes, now the question that arises for consideration of this court is as to what offences they have committed? The prosecution case is that they have committed the offences punishable under Sections 489A, 489B, 489C read with Section 120B IPC as they hatched conspiracy to process fake currency notes and also received and circulated the same from one accused to another and they were also found with the fake currency notes in their possession.

18. For deciding this question, it would be appropriate and advantageous to refer to Sections 489A, 489B and 489C IPC, which read as under:

> “489A. Whoever counterfeits, or knowingly performs any part of the process of

counterfeiting, any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation: For the purposes of this Section and of Sections 489B, 489C, 489D and 489E, the expression “bank-note” means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

489B. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489C. Whoever has in his possession any forged or counterfeit currency-note or bank note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

19. It has been held by this Court that A-1, A-2, A-4 and A-6 were found with fake currency notes. However, the question that requires to be considered by this Court is whether the trial court has rightly convicted them for commission of the offences under Sections 489A, 489B and 489C read with Section 120B IPC?

20. So far as Section 489A IPC is concerned, it is a penal provision which provides that whoever

counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished whereas Section 489B is a penal provision which provides that whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished and Section 489C is a penal provision which provides that whoever has in his possession any forged or counterfeit currency-note or bank note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished.

20.1. As per the prosecution case, A-1, A-2, A-4 and A-6 are convicted with the help of Section 120B IPC. Section 120B IPC deals with punishment of criminal conspiracy. For the purpose of proving criminal conspiracy, the prosecution must establish the following:

(i) that the accused agreed to do or caused to be done an act;

(ii) that such act was illegal or was to be done by illegal means;

(iii) that some overt act was done by one of the accused in pursuance of the agreement.

To prove the criminal conspiracy, the prosecution must establish that there was meeting of minds between two persons to do an unlawful act. It is very difficult to get direct evidence to prove criminal conspiracy and it can be proved only by circumstantial evidence. However, it is not sufficient in order to convict a person under this section, merely to prove that he had been associating with the other accused at a certain place and on his arrest endeavoured to extricate himself from being accused of some thing connected with the conspiracy; and the prosecution cannot complete what is necessary in order to show that he was a person who concerted with others by proving that he was friendly with

the other accused and was anxious to escape observation or even was doing his best to conceal his whereabouts. In cases of conspiracy, the agreement between the conspirators cannot generally be directly proved, but only inferred from the established facts in the case. A conspiracy need not be established by evidence of an actual agreement between the conspirators and overt acts raise a presumption of an agreement and knowledge of the purpose of the conspiracy. The connection has to be established with the conspiracy and not with the separate acts of different conspirators which are the overt acts of the different individuals in proof of the conspiracy. Overt acts may properly be looked at as evidence of the existence of a concerted intention and in many cases it is only by means of overt acts that the existence of the conspiracy can be made out. But the criminality of the conspiracy is independent of the criminality of the overt act. To prove conspiracy it is not necessary that there should be direct communication between each conspirer and every

other but the criminal design alleged must be common to all.

21. The prosecution has tried to justify framing of the charges under Sections 489A and 489B read with Section 120B IPC and also the conviction recorded for the said offences against the accused by contending that all the accused made confessional statements before the police officers while they were intercepted and apprehended and on the basis of the confessional statements, the prosecution could find out the entire link of circumstances and, therefore, the conviction recorded under Sections 489A, 489B and 489C IPC read with section 120B IPC is justified.

22. As per the learned advocates of the accused, except the offence under Section 489C, offences under Sections 489A and 489B IPC read with Section 120B IPC is not proved. Except the confessional statements of the accused and that too when they were in custody, there is no

evidence to establish that there was meeting of minds and the prosecution has failed to establish that there was a meeting of minds prior to the hatching of the conspiracy.

23. On reappraisal of the entire evidence of P.W.1, DH Goswami, P.W.8, DS Waghela, P.W.10, SG Trivedi and P.W.11, RC Pathak, whose evidence has been discussed at length in earlier paragraphs of this judgment, according to us, there is no direct or circumstantial evidence against the accused to establish that they have hatched criminal conspiracy or there was meeting of minds prior to their hatching criminal conspiracy. It has come from the statements of the accused that they have hatched conspiracy but how far the statements of the accused when they were in custody are relevant for convicting them for offence of criminal conspiracy is to be looked into. In this connection, it would be appropriate to refer to the decision of the Supreme Court in the case of State of Gujarat v. Mohammed Atik and others, AIR 1998 SC 1686. In

paragraph 17 of the above referred to reported decision, the Supreme Court has observed as under:

> "Thus, the principle is no longer *res integra* that any statement made by an accused after his arrest, whether as confession or otherwise, cannot fall within the ambit of Section 10 of the Evidence Act. The corollary of it is that the confessional statement of 4th respondent (Abdul Latif Abdul Wahab Sheikh) who is no more alive now thus vanishes from the ken of evidentiary use."

The Supreme Court thereafter in a decision in the case of State (N.C.T. of Delhi) v. Navjot Sandhu, AIR 2005 SC 3820, after referring to its earlier decision in Mohammed Atik's case (supra) as well as other earlier decisions, has concluded in paragraph 11 as under:

> ".....Ultimately, the test applied was whether any particular accused continued to be the member of the conspiracy after his

arrest. Though the learned Judge stated that “similar view was expressed by this Court in State v. Nalini”, we find no such statement of law in Nalini's case. However, this accidental slip does not make any difference. The law is thus well settled that the statements made by the conspirators after they are arrested cannot be brought within the ambit of Section 10 of the Evidence Act, because by that time the conspiracy would have ended. If so, the statement forming part of the confessional statement made to the police officer under Section 32 (1) of POTA cannot be pressed into service by the prosecution against the other co-accused. Thus, the endeavour to bring into the gamut of evidence through the route of Section 10 is frustrated by a series of decisions, starting from Mirza Akbar's case (1940) ((AIR 1940 PC 176=1940 Cri.LJ 871).”

23.1. Applying the principles laid down by the Supreme Court in the above referred to judgments

to the facts of the present case, for proving the offence under sections 489A and 489B read with Section 120B IPC, there is no evidence worth the name to prove conspiracy except the bald statements of the accused and that too when they were in custody which was hit by Sections 10 and 25 of the Indian Evidence Act.

24. There is no evidence worth the name on record even remotely to suggest that the accused had in fact counterfeited the currency notes nor there is evidence to show that they have received it from one accused to another. It is true that A-1, A-2, A-4 and A-6 were found with fake currency notes and, therefore, they are individually liable for commission of offence punishable under section 489C IPC.

25. Mr. Kodekar, learned APP has submitted that since the accused persons are found in possession of fake currency notes in bulk quantity and when they have not disclosed as to wherefrom they obtained such notes they should be convicted for the offence under Sections 489A and 489B IPC. To

canvass the aforesaid proposition Mr. Kodekar, learned APP, has pressed into service the decision of the Supreme court in the case of Ponnuswamy v. State, 1995 Cri.LJ 2658. In that case the prosecution has come out with the case that the appellant-accused had purchased paddy from a peasant on payment of 130 forged currency notes of Rs.100 denomination. On the arrest of the appellant, further forged currency notes were alleged to have been found in his possession for which he had to face a trial separately. All the same, the appellant had no explanation to offer as to wherefrom had he obtained those forged currency notes. Silence on the part of the appellant in such circumstances would by itself be a telling circumstance which would weigh against him in the consideration of the prosecution evidence led against him. In these circumstances, the Supreme Court held that the conviction recorded under Section 489B IPC deserves no alteration and equally there is no scope for reduction of sentence and maintaining the conviction and sentence of the appellant for

commission of offence under Section 489B IPC, the appeal filed by the appellant was dismissed.

25.1. The facts of the case before the Supreme Court are not similar to the facts of instant case because in the instant case the accused had never tried to put the counterfeit currency notes in circulation which would invoke the penal provisions of Section 489B IPC. They were found in possession of fake currency notes.

25.2. It is also required to be noted that merely because the accused were found in possession of counterfeit currency notes they could not be held guilty for commission of offences under Sections 489A and 489B IPC. Therefore, the above submission of Mr. Kodekar cannot be accepted and hence the same is rejected.

26. In above paragraphs of this judgment, we have dealt with the contentions raised by the learned advocates of the accused in favour of the accused and the contentions raised by Mr.

Kodekar, learned APP supporting the judgment and order of the trial Court. We have held that though panchas have not supported the prosecution case, the evidence of the police officers are of sterling quality and they inspired the confidence of the Court and, therefore, their evidence can be the basis for conviction of the accused. Though the prosecution could not establish the source, base or the roots of counterfeiting of the currency notes by producing any evidence, it could establish recovery of fake currency notes from A-1, A-2, A-4 and A-6. We have also held that the prosecution could not establish the meeting of minds of A-1, A-2, A-4 and A-6 and thus has failed to establish the offence of criminal conspiracy as the prosecution has not been able to establish the offence under Section 120B IPC by producing any valid and acceptable evidence, except the confessional statements of the accused and that too when they were in custody, which are not admissible in evidence. Thus, from the entire evidence on record, the prosecution has been able to establish, against

A-1, A-2, A-4 and A-6, only the offence punishable under Section 489C IPC and nothing more.

26.1. The contention of the learned advocates of the accused that the incident has taken place on 1.12.2002 and the muddamal has been sent to FSL on 28.12.2002 and in the meantime there is no evidence to suggest that the muddamal was in safe custody and has not been tampered with and no witnesses have been examined with respect to the same, cannot be accepted simply because the evidence of the police personnel is of sterling quality and we have observed herein above that their evidence can be believed. Moreover, if one looks into the panchnamas and the FSL report, etc., it would be clear that the serial numbers of the fake currency notes recovered from the accused as noted in the panchnamas and those which were sent to FSL for analysis and which were analyzed by FSL are the same. The above contention of the learned advocates of the accused cannot be accepted because prima facie

the currency notes recovered from the accused were counterfeit currency notes and there was no reason for the police personnel to tamper with the fake currency notes and in place of those fake currency notes place other fake currency notes in the packet and then send the same to FSL for analysis. Therefore, according to us, the above contention of the learned advocates of the accused has no substance and merit and deserves to be rejected.

26.2. So far as the contention of the learned advocates of the accused that with respect to the commission of offence under Section 489C IPC also, the entire story put up by the prosecution against A-2 is not believable since he was admitted in the hospital and had undergone a surgery on the leg and it is highly unbelievable that A-2, though operated just a day before, would be carrying the muddamal notes under his pant in the hospital after his operation, cannot be accepted. It may be noted that the learned advocates of the accused have not seriously

challenged the finding that fake currency notes were recovered from A-1, A-2, A-4 and A-6. Moreover, if the fake currency notes were with A-2 prior to his getting admitted in the hospital, he would not have dared to keep the same at his house because if he does not belong to well off family, the family members would ask him as to where from he has got such a huge amount. If he belongs to a well-to-do family and leaves the fake currency notes at his house and goes to hospital for remaining in the hospital for some days, it may happen that in his absence some of his family members may take some notes from the bundle and may purchase something by paying the fake currency notes and in that event they may fall into deep waters, which A-2 would not like in any case as he was sure that the muddamal notes are fake and also knew better that if it is found out by any other person that those notes are fake, the consequences that to follow. Therefore, only option left to him was to carry the notes with him to hospital. In hospital also, he could not have kept the fake currency notes in

the shelf because family members, relatives and friends may be visiting him and even hospital staff would also be visiting his room and if they find the same and identify the same as fake currency notes in that case also, he will be in difficulty and, therefore, the best option left to him was to keep the fake notes with him, just near his body and that is why he has kept the fake currency notes inside his pant. Therefore, the above contention of the learned advocates of the accused, raised with a view to see that A-2 is absolved from the charge of commission of offence under Section 489C IPC, has turned out to be of no help to A-2.

26.3. The contention of the learned advocates of the accused that A-6 has been found in possession of certain torn muddamal currency notes and that too after 10 days and in this view of the matter also it is highly unbelievable that a person would keep torn counterfeit currency notes with him which would be of no use to him and, therefore, the prosecution case cannot be

believed, cannot be accepted. As discussed above, the evidence of the police personnel is of sterling quality and there is no doubt that fake currency notes were recovered from A-6 also.

26.4. Though the “business” in which A-6 was found involved is illegal, in such illegal business also one has to maintain books of accounts. It may not be like the books of accounts maintained by other businessmen who are doing business legally but one has to keep some account either in some diary or in computer or at some other place where from he can find out the details about the fake currency notes which have come to him. Since the prosecution has not been able to establish that the fake currency notes are processed by the accused, only conclusion that can be reached is that somehow the fake currency notes have come to his possession. Such illegal business goes on, on the basis of 'trust' and not by way of signing any agreement. In respect of each and every counterfeit currency note which comes to a

person, there shall have to be an account as to how many currency notes he has received, how many he has given to some other person, how many are torn or destroyed, so on and so forth and ultimately all the numbers are to be tallied with the total number of fake currency notes supplied to him. Therefore, if, for some reason, some counterfeit currency notes are torn, he cannot throw them away because he is accountable for the same. He has to show that they are torn because of some reason and for that purpose he has to keep those torn pieces and then only such notes are given deduction from his account. If this was not the purpose of keeping the torn fake currency notes with A-6, what else can be the reason for him to keep the torn notes with him when they are of no use to him and he had all the chances to destroy the same by burning, tearing them into tiny pieces, etc., because he was arrested ten days after A-1, Kavindra, was arrested with fake currency notes? The reasons for tearing of the counterfeit currency notes are myriad and only A-6 knows how those notes are

torn. May be the design, colours, etc., may not be as accurate as it should have been and as expected by him and, therefore, he might have torn them. Therefore, A-6 was supposed to give account for the fake currency notes that reached to him through whatever source it may be and hence he had kept the torn counterfeit currency notes with him. Therefore, this submission of the learned advocates of the accused also cannot be accepted.

26.5. It may also be appreciated that in such illegal business, so many individuals are involved, for instance, 'B' may be supplying fake currency notes to 'C' and 'C' may be giving such notes to 'D' and 'D' may be giving such notes to 'E'. 'B' might have got the fake currency notes from 'A' but 'C' may not be knowing 'A'. Similarly, 'A' may not be knowing 'C' but 'B' knows 'A' and 'C' but he may not be knowing 'D'. Therefore, in such a situation, if a link is cut off, i.e., 'B' or 'C' is cut off, the whole circumstances cannot be traced out and

the prosecution cannot reach to the root of the case and as discussed above, in instant case, it is clear that some of the accused are still absconding and certain persons are still wanted, and, therefore, the prosecution could not establish as to from where the fake currency notes have originated and who supplied the fake currency notes to A-1, A-2, A-4 and A-6. The fake currency notes might have originated from within the territory of the country or from outside the border. As pointed out above, there is no evidence to show that A-1, A-2, A-4 and A-6 have processed the fake currency notes and there is also no evidence to show that they have circulated those fake currency notes, as genuine currency notes, in public. Offence of criminal conspiracy is also not proved against them. The only offence proved against them is the commission of offence punishable under Section 489C IPC for possessing counterfeit currency notes but wherefrom they have received the fake currency notes is not established.

27. On overall reappraisal of the entire evidence as well as the case law and the relevant penal provisions contained in IPC and the provisions contained in the Indian Evidence Act, following points are culled out:

(i) The prosecution has failed to establish the charge of conspiracy against all the accused persons;

(ii) The prosecution pitted only the circumstances of confessional statements of the accused which were obtained when they were in custody which cannot be made basis for the conviction of the accused for commission of offence under Sections 489A and 489B read with Section 120B IPC against the accused;

(iii) The prosecution has failed to establish that there was no meeting of minds prior to commission of the offence;

(iv) Accused No.5 was in fact not found with any fake currency note;

(v) Accused 1, 2, 4 and 6 were found with fake currency notes in huge quantity which offence is punishable under Section 489C IPC.

28. Seen in the above context, the impugned judgment and order recorded by the trial Court convicting and sentencing A-1, A-2, A-4 and A-6 for commission of offences punishable under Sections 489A IPC and 489B IPC read with section 120B IPC deserves to be quashed and set aside by acquitting all of them of the said charges whereas the order recorded by the trial Court convicting and sentencing A-1, A-2, A-4 and A-6 for commission of offence under Section 489C IPC deserves to be confirmed and maintained. As per the penal provision of section 489C IPC, for commission of offence under this Section, the accused shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Therefore, the accused could have been convicted for a term which may extend to seven years, or with fine, or with both. However, since the State

of Gujarat has not filed any appeal raising grounds that the punishment imposed on the accused under Section 489C IPC is inadequate, we do not deem it expedient to interfere with the sentence imposed by the trial Court, which is RI for five years and fine of Rs.1500/- i.d., RI for 1 ½ months.

28.1. Since A-5 was not found with any counterfeit currency notes, conviction and sentence recorded by the trial court against him for the offences under Sections 489A, 489B, 489C read with Section 120B IPC deserves to be quashed and set aside and the appeal filed by him deserves to be allowed.

29. For the foregoing reasons, Criminal Appeal No. 868 of 2002 filed by A-5, Noor Mahmed alias Bhaiyya Yakub Saiyed is allowed. The judgment and order of conviction and sentence recorded by the trial Court against him for the offences under Sections 489A, 489B and 489C read with Section 120B IPC is quashed and set aside. The jail authorities are directed to release him

from jail forthwith if his presence is not required in connection with any other case.

29.1. So far as Criminal Appeal Nos. 747 of 2002, 744 of 2002, 862 of 2002 and 743 of 2002 filed by A-1, A-2, A-4 and A-6 respectively are concerned, they succeed in part and accordingly they are partly allowed. The judgment and order of conviction and sentence passed by the trial Court convicting and sentencing A-1, A-2, A-4 and A-6 for commission of offences punishable under Sections 489A and 489B read with Section 120B IPC is quashed and set aside and they are acquitted of the said charges.

29.2. So far as A-1, A-2, A-4 and A-6 are concerned, the judgment and order of conviction and sentence recorded by the trial Court under Section 489C IPC is hereby confirmed and maintained.

29.3. We have gone through the jail remarks sheets produced by Mr. Kodekar, learned APP. The jail authorities are directed that A-1, A-2, A-4

and A-6 shall be released from jail forthwith, on their undergoing the sentence imposed by the trial Court for commission of offence punishable under Section 489C IPC, if their presence is not required in connection with any other case.

29.4. With the above observations and directions, all the above mentioned Criminal Appeals are disposed of.

(A.M. Kapadia, J.)

(Harsha Devani, J.)

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